

IN THE  
UNITED STATES  
CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

C. SCHWARTING, Master and Claimant of the  
German Bark "ROBERT RICKMERS," her  
tackle, apparel and furniture, *Appellant*,

vs.

THE STIMSON MILL COMPANY, a corpora-  
tion, *Appellee*.

THE STIMSON MILL COMPANY, a corpora-  
tion, *Cross-Appellant*,

vs.

C. SCHWARTING, Master and Claimant of the  
German Bark "ROBERT RICKMERS," her  
tackle, apparel and furniture, *Cross-Appellee*.

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF WASHINGTON, WESTERN DIVISION.

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BRIEF OF CROSS-APPELLANT

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HUGHES, McMICKEN, DOVELL & RAMSEY,  
*Attorneys for Cross-Appellant.*



No. 1149

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The Stimson Mill Company, libellant in the District  
Court, has taken a cross appeal from the judgment and

decree entered by the District Court in its favor, in which it complains of the amount allowed by that court as demurrage. Its assignments of error are as follows:

1. The court erred in allowing libellant only the sum of \$4292.00 for demurrage.

2. The court erred in allowing demurrage for only 74 days, whereas libellant's ship actually lost ninety days by reason of the said collision, and was entitled to demurrage for the full period of said ninety days.

A determination of the complaints urged by these assignments of error involves only a question of fact. The court rightly fixed the rate of demurrage at \$58.00 per day. This figure was correctly ascertained by the court from the undisputed facts in the case, which were, that the net earnings of the ship for a single voyage was \$3500.00, and that the round trip, constituting the entire voyage, consumed an average of sixty days. The court, however, inadvertently, we think, fell into an error in ascertaining the number of days lost by libellant's ship by reason of the collision. This occurred, doubtless, because the collision was on the 25th day of December, 1900, and the evidence disclosed that the repairs of the ship were completed by the 10th day of March following. This, however, does not represent the time actually lost by libellant's ship. At the time the collision occurred, the ship had already been engaged in loading fifteen days and had taken in 650,000 feet of lumber of a total cargo of 950,000 feet. This lumber, of course, had to be removed before the ship could be repaired, and after the repairs were completed it took another fifteen days to reload the lumber so taken out. Until this was done, libellant was not restored to the situation in which it was at the time of the collision, and hence libellant is denied compensation for fifteen days' use of its ship, actually lost to it.

Captain Peterson, master of the "Stimson," gave the following testimony on the questions here involved:

"Q. How long had it taken you to put the cargo in her that was in her at the time the collision occurred?

A. Fifteen days.

Q. How long did it take you to again put the same kind of cargo in?

A. Fifteen days.

Q. How much time was lost by reason of this collision on that ship?

A. Ninety days."

(Transcript, pp. 197-198.)

Again, on page 225 of the Transcript, the same witness testified as follows:

"Q. You have already stated that the total time lost by this collision, from the time of the collision until your ship was repaired and its cargo restored to the extent that it was originally at the time of the collision was 90 days?

A. Yes, sir."

The District Court may have been confused by the fact that the accounts as shown by the exhibits introduced in evidence were, in some instances, made up from the 10th day of December to the 10th day of March. This is explained, however, by the following testimony of Captain Peterson:

"Q. Now, in some instances these [accounts] commence as early as the 10th of December, but they do not any of them run later than March 9th?

A. No.

Q. I will ask you, whether in these cases you carried

in the period from March 9 to March 25 when you were loaded as far as you had been at the time [of the collision]?

A. No, I paid the crew up until March 9 or 10.

Q. So that while you commenced it on December 10, 15 days before the 25th, you did not charge for the corresponding 15 days between March 10th and 25th?

A. No.

Q. When you were reloading?

A. No, it was charged up on my next statement, the statement for the coming trip.

Q. But that statement is not included in these bills?

A. No sir.

Q. So that the actual amount of time is only the time lost by reason of this collision?

A. Yes sir.

Q. And while in this bill you have included 14 days before the collision——

A. We have not included 15 days after March 10th.

Q. After March 10th to 25th, after you had the vessel reloaded as far as she was before the collision?

A. Yes sir.

Q. So that there is no excess charge?

A. No, sir."

(Transcript pages 230 and 231.)

F. D. Stimson also testified that the vessel was not able to earn anything during the period of ninety days while undergoing repairs and reloading.

(Transcript page 237.)

On the point involved in this cross appeal, the testimony is without conflict. The time actually lost by the

ship "Stimson," on account of the collision was ninety days, and for that loss, it is entitled to demurrage, at the rate fixed by the court, to-wit, \$58.00 per day. The judgment of the District Court should be corrected, so as to allow this additional sum to libellant.

Respectfully,

HUGHES, McMICKEN, DOVELL & RAMSEY,  
Proctors for Stimson Mill Company, Libellant  
and Cross Appellant.